NO. 79-709

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

LOCAL 520, INTERNATIONAL UNION
OF OPERATING ENGINEERS, et al.,

Petitioners,

vs.

JAMES JONES, et al.,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

The Respondents are black operating engineers who are seeking to enforce in Federal Court any rights they may have pursuant to a preferential hiring plan aimed at remedying past racial discrimination.

The Court of Appeals for the Seventh Circuit rejected Petitioners' contention that the Respondents could not enforce their rights under a remedial hiring agreement in Federal Court. The Petitioners continue to assert that employment rights under a remedial hiring agreement are unenforceable "preferential rights."

The Respondents oppose the granting of the Writ herein on the basis that the law is clear and in the alternative suggest that this Court summarily affirm the judgment of the Court below.

ARGUMENT

In asserting that the Writ should be granted the Petitioners contend that the holding by the Court of Appeals for the Seventh Circuit in the instant case that "an action to enforce preferen-

tial treatment of minority persons in employment is maintainable under 42 U.S.C. §1981 is in direct conflict with the decision of the Sixth Circuit in Long v. Ford Motor Company, 496 F.2d 500 (1974)...." (Pet. p. 11).

This assertion as it relates to the Court of Appeals for the Sixth Circuit obviously does not take into account the October 12, 1979, decision of that Circuit in Detroit Police Officers Assn. v. Young, ___F.2d___, 20 FEP Cases 1728 (6th Cir. 1979) (50/50 Promotion Preference).

The Sixth Circuit's opinion in Detroit Police Officers Assn. reviewed and applied the pronouncements by this Court in United Steelworkers of America v. Weber, 443 U.S. ___, 47 LW 4851, 20 FEP Cases 1 and Regents of the University of California v. Bakke, 438 U.S. 265, 17 FEP Cases 1000 (U.S. 1978).

In addition, this Court has recognized that the instant case has its genesis in blatant discriminatory practices. In Bakke, this Court stated at Footnote 40 that "Every decision upholding the requirement of preferential hiring

under the authority of Executive Order 11246 has emphasized the existence of previous discrimination as a predicate for the imposition of a preferential remedy. ... Southern Illinois Builders Assn. v. Ogilvie, 471 F.2d 680, 5 FEP Cases 229 (C.A. 7 1972); (underlining added).

The plaintiffs in the instant case are black individuals who were the beneficiaries of the Court's holding in Southern Illinois Builders Assn. Ogilvie, supra. The attempt to deprive them of their employment opportunities continues.

The Court of Appeals for the Seventh Circuit correctly held that the plaintiffs' rights are enforceable in Federal Court, especially in light of the history of discrimination practiced by some of the Petitioners. United States v. International Union of Operating Engineers, Local 520, et al., 476 F.2d 1201 (7th Cir. 1973); United States v. United Brotherhood of Carpenters and Joiners of America, Local 169, 457 F.2d 210, 4 FEP Cases 85 (7th Cir. 1972); cert. denied.

Thus, the law is clear with respect to the

enforcement of hiring plans aimed at remedying past discrimination, and the need for its enforcement in this case is equally clear.

CONCLUSION

The Petition for Writ of Certiorari should be denied. In the alternative, the decision of the Court of Appeals for the Seventh Circuit should summarily be affirmed in order to remove all doubt as to enforceability of the remedial agreements of the kind here involved.

Respectfully submitted,

Edward L. Welch

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et al.